

This is Captivation 5.0 of the series captivation, this legal action is in direct lineage of my fathers
bloodline and remains one of the greatest conspiracies of canadian history and albertan native struggle

given my own involment with the director of indian affairs as a rent boy to dan goodleaf the creator of
nunavut directly relates to the magic I encounter everywhere

it is with great pleasure that I give to you the fifth installment of captivation by rev guru Shaun Allen
Delage of Vancouver island this day of 2021

Eileen Mcallister is my dads mother and this entire lawsuite relates to my paternal bloodline

Between;

IN THE COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL DISTRICT OF CALGARY

ROGER STONEY, EILEEN McALLISTER (nee STONEY)

..... and MEL VIN McALLISTER,

-and-

Plaintiffs

HER MAJESTY THE QUEEN IN RIGHT OF CANADA (as represented by the
ATTORNEY GENERAL OF CANADA and the MINISTER OF IND/AN AFFAIRS AND
NORTHERN DEVELOPMENT CANADA)

(1) Plaintiffs

Proposed Class Action

STATEMENT OF CLAIM

Defendants.

Brought under the Class Proceedings Act.

STATEMENT OF CLAIM

I. PARTIES

Defendant

1. The Plaintiffs, Roger Stoney, Eileen McAllister (nee Stoney), and Melvin McAllister, reside in Northern Alberta and are descendants of the original members of the Beaver Indians of Dunvegan Band who entered into Treaty Eight with the Government on or about July 6, 1899 at or near Fort Dunvegan in northwestern Alberta.

(2) Class

2. The Class includes all those persons who are the direct descendants of Beaver Indians who resided on or were affiliated with Beaver Reserves 152, 152A, and 152C.

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(3) Defendants

3. The Defendant, Her Majesty the Queen in Right of Canada is represented by the Attorney General of Canada and the Minister of Indian Affairs and Northern Development

(hereinafter collectively "the Government"), and is seized with jurisdiction over Indians and lands reserved for Indians pursuant to Section 91(24) of The Constitution Act, 1867 and ss. 25 and 35 of The Constitution Act, 1982. The Government is a party to Treaty Eight with the Plaintiffs.

4. Whether specifically pled or not in the within Claim, the Government acted through its agents and servants and the actions of the Government as pled herein are intended to be understood in that context. Not to restrict the generality of the foregoing, the agents and servants of the Government, for whose wrongdoing the Government is responsible, includes Indian Agents, negotiators, and land surveyors employed by the Government.

HISTORICAL BACKGROUND

5. Prior to contact with Europeans, the Beaver Indians (known in their language as the Dunne-za) were a distinct group with their own language, customs, and religion. They were isolated and resisted intermingling with any outside groups.

6. The Dunne-za occupied the upper Peace River region of the Northern Alberta area from the Notikewin River in the north to the Smokey River in the south and from Fort St. John in the west to the Lesser Slave Lake in the east.

7. The Dunne-za subsisted by hunting, trapping, and gathering wild produce. Their traditional hunting areas were in Northern British Columbia and Northern Alberta.

8. The ancestors of the Plaintiffs, who were Dunne-za, hunted, trapped, and fished in what is now known as the Peace River District of Northern Alberta.

9. When European settlers began encroaching upon the traditional hunting grounds of the Dunne-za, the Government began Treaty negotiations with the Dunne-za elders, which led to their inclusion in Treaty Eight on July 6, 1899. That Treaty provided for the surrender of the traditional hunting and trapping grounds of the Dunne-za in exchange for future reserves and other benefits to be conferred by the Government.

10. The Dunne-za who were included in Treaty Eight on July 6, 1899 at or near Fort Dunvegan became known in Canadian Government materials as the Beaver Indians of Dunvegan Band. Their Chief at that time was Neepee and their Head Man was Natoosis.

11. In April, 1900, Neepee and Natoosis asked the Dominion Lands Surveyor, J. Lestock Reid (hereinafter "Reid"), to survey lands for a Beaver Indian Reserve.

12. In 1904, Beaver Reserve #152 was created containing 15,630 acres and was surveyed by Reid in the "Fair View", area 20 kilometres north of Fort Dunvegan. By 1905, approximately 114 Beaver Indians resided on Beaver Reserve 152. In 1914, the resident population was 143, all of whom were Beaver Indians descendants of the Dunne-za.

13. Chief Neepee asked for a small reserve for him and his family 9 Y. kilometres down the river from Fort Dunvegan. This was surveyed and became Beaver Reserve 152A, also known as Neepee Chief Reserve 152A and consisted of 260 acres.

14. In 1911, a further Reserve, Beaver Reserve 152B, was created near the Horse Lakes totaling 4,032 acres. Headman, Natoosis, who was one of the signatories of Treaty Eight took up residence on this Reserve along with the 78 of his people, all of whom were Beaver,

15. After World War I, the Government began looking for land to give to returning war veterans and attempted to negotiate with the Beaver people regarding surrender of their Reserves, so that the land could be given to returning soldiers. The Beaver Indians refused to surrender their lands.

16. In 1928, the railroad line reached Fairview, Alberta, and Euro-Canadian demand for land in that area intensified. Beaver Reserves 152 and 152A contained fertile agricultural land much coveted by white settlers in the area. These settlers delivered Petitions to the Government seeking the opportunity to purchase the Beaver lands.

17. In a letter dated July 14, 1928, D.C. Scott, Deputy Superintendent General of Indian Affairs, stated that the Department might accept the surrender of Beaver land if the consent is obtained individually or in groups instead of at a meeting of male members of the Band as required by section 51 of The Indian Act, RS. 1927 (hereinafter "The Act").

18. Section 51 states:

51 (1) Except as in this Part otherwise provided, no release or surrender of a reserve, or a portion of a reserve, held for the use of the Indians of any band, or of any individual Indian, shall be valid or binding, unless the release or surrender shall be assented to by a majority of the male members of the band of the full age of twenty-one . years, at a meeting or council thereof summoned for that purpose, according to the rules of the band, and held in the presence of the Superintendent General, or of any officer duly authorized to attend

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such council, by the Governor in Council or by the Superintendent General. . .

(2) No Indian shall be entitled to vote or be present at such council, unless he habitually resides on or near, and is interested in the reserve in question.

(3) The fact that such release or surrender has been assented to by the band at such council or meeting shall be certified on oath by the Superintendent General, or by the officer authorized by him to attend such council or meeting, and by some of the chiefs or

principal men present thereat and entitled to vote, before any person having authority to take affidavits and having jurisdiction within the place where the oath is administered.

(4) When such assent has been so certified, as aforesaid, such release or surrender shall be submitted to the Governor in Council for acceptance or refusal. R.S., c. 81, s. 49; 1918, c. 26, s.2.

19. On September 21, 1928, some of the descendent's of Neepee and Natoosis entered into an agreement (hereinafter the "1928 Surrender Agreement") with the Government which purported to surrender to His Majesty the King most of Beaver Reserve 152 and all of 152A.

20. A fraction of a section (320 acres) located on Beaver reserve 152 was omitted from the surrender and remained in Beaver hands. The surrendered land was to be sold and the proceeds of sale held in trust by the Government for the Beaver Indians of Dunvegan Band.

21. Separate documents were prepared for Beaver Reserve 152 and Beaver Reserve 152A. Both of the surrender documents included the phrase, "to have and to hold the same unto his said Majesty the King, his heirs and successors forever, in trust to sell by public auction the same to such person or persons and upon such terms as the Government of Canada may deem most conducive to our welfare and that of our people."

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22. Thomas Stoney (known in his language as Peyawasis) was one of the signatories on behalf of the Beaver Indians to the 1928 Surrender Agreement. The Plaintiff, Eileen McAllister (nee Stoney) is the granddaughter of Thomas Stoney. The Plaintiffs, Roger Stoney and Melvin McAllister are the great grandsons of Thomas Stoney.

23. Also, part of the 1928 Surrender Agreement was a stipulation that land near the Eureka River was to be set aside as Beaver Reserve 152C for the Beaver Indians of Dunvegan Band. The Beaver Indians understood that this land was being given to them as part of their surrender of Reserve 152 and 152A.

24. The 1928 Surrender Agreement violated subsections (1), (2), and (3) of section 51 of The Indian Act, 1927 and as such is void or alternatively voidable at the insistence of the Plaintiffs.

25. The 1928 Surrender was negotiated by Indian Agent William Murison (hereinafter "Murison") on behalf of the Defendants. Prior to the Surrender, Murison drew up a list that he claimed included all eligible voters, however:

(I) he missed two eligible voters:

(a) Edward Payteaywasis (known on Government pay lists as #67); and

(b) David Gouhim (# 76)

(ii) of those listed by Murison as being eligible voters, three were ineligible. These are:

(a) Alex Chatlas (#50, a minor until 1931)

(b) Atachiela Pouce Coupe (no such person); and

(c) Adam Omansee (a non Indian).

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26. With the two additional eligible voters and the deletion of three eligible voters, there would have been 21 eligible voters requiring 11 voters present for a quorum. There were only 9 purportedly eligible voters at the Surrender meeting on September 21, 1928. This is a violation of section 51 (1) of The Indian Act, 1927.

27. Murison claimed to have the consent of 5 other eligible voters by way of Statutory Declarations dated September 22, 1928, but there was no provision for the taking of votes by Statutory Declaration and therefore, those votes were ineligible.

28. Murison also brought in five Indians who resided at Horse Lake Reserve 152B, some 150 miles from Beaver Reserve 152. These Indians would not be eligible voters for a decision on Beaver Reserve 152 as they did not meet the residency requirements of section 50(2) of The Indian Act, 1927.

29. There are other irregularities on the face of the 1928 Surrender Agreement. These

include:.

(I) There are 16 signatures on the September 21'1 Agreement, but 4 of the signatures are purportedly from men who were not present at the meeting but who allegedly (by Murison) signed a Statutory Declaration on September 22"d at different locations, a violation of section 51(1);

(ii) John Beaver, #69, appears as one of the signatories to the September 21, 1928 Agreement, but he had died seven years earlier in 1921.

30. Murison swore the Affidavit certifying that the conditions required by section 51 had been met. In fact, these conditions had not been met. The Affidavit violates section 51(3), particulars of the violations include:

(I) The Affidavit of the Surrender meeting states that only members of the Beaver Band from IR 152 and IR 152A were present at the voting meeting. The voter list, however, is comprised of band members from IR 152B in addition to IR152 and IR 152A, as it includes the 5 members brought in from IR 152B for the meeting.

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(ii) The Affidavit does not mention the presence of these 5 men from IR 152B, although their votes were counted as being affirmative

votes.

31. Indian Agents, including Murison, used the surrender process to advance their own financial interests and of those business associates by manipulating surrenders then purchasing the Indian land themselves or offering it to associates or land speculators at less than fair market value.

32. More than 100 surrenders of Treaty Reserve land were obtained by Crown Agents between 1890 and 1930. In many cases, the surrenders were obtained just a few years after the lands had been set aside as Reserves for the Indians.

33. In the present case, the land was surveyed for the Beavers in 1904. Pressure from Government agents to surrender the land began very soon after but was strenuously resisted by the Beaver people. In 1928, Murison manipulated the surrender of Beaver Reserves 150 and 150A in bad faith using the several illegal methods set out above.

34. The actions of Murison as set out in paragraphs 24 to 29 above were violations of The Indian Act and were actions which detrimentally affected the interests of the Beaver Indians. These actions were intentional on the part of Murison and were done in bad faith.

35. The 1928 Surrender Agreement is void, or alternatively, ought to be voided based on the Defendants' many breaches of The Indian Act, 1927. The land purported to be surrendered ought to be returned to the Plaintiffs who are the descendants of the owners of Beaver Reserve 152 and 152A.

36. Alternatively, the Plaintiffs are entitled to compensation equal to the present value of the land which is in excess of \$123 Million Dollars.

37. Notwithstanding that Indian Agent Murison, illegally, brought in 5 men from Indian Reserve 152B for the surrender vote, these men from Indian Reserve 152B were not habitually resident at Beaver Reserve 152 or 152A, and therefore pursuant to s. 51 (2) of the Act had no interest in those Reserves at the time of the 1928 Surrender. The passage of time did not confer any interest or benefit upon Indians who resided at Indian Reserve 152B, some 150 miles away from the lands in question, yet in November, 2000, the Defendants

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concluded a specific claims agreement with members of Indian Reserve 152B which resulted . in payment to those members the sum of approximately \$123 Million Dollars as compensation for Beaver Reserves 152 and 152A.

38. The members of what is now known as Horse Lake Reserve 152B are not the descendants, heirs, nor successors in title to the Beaver Indians who were the beneficial owners of Beaver Reserves 152 and 152A.

39. The vast majority of the members of present day Horse Lake Indian Reserve 152B are not Beaver descendants but are Cree Indians who transferred into Beaver Reserve 152B long after the 1928 Surrender.

40. The members of Horse Lake Reserve 152B had no interest in the lands which were

· the subject of the 1928 Surrender Agreement and accordingly, the Defendants negotiated the specific claim with the wrong group of Indians. The principle *nemo dat quod non habet* applies.

41. In 1955, twenty seven years after the alleged Surrender, the Government took the position that the Beaver Indians had to purchase the land at Beaver Reserve 152C for \$6. 75 per acre. The payment for Beaver Reserve 152C was taken from those funds being held in trust by the Government, which funds were the proceeds of sale of Beaver Reserves 152 and 152A. The Beaver Reserve 152C was to be given to the Plaintiffs as part of the consideration for the 1928 surrender. They are entitled to the return of the funds taken by the Government for the alleged purchase of 152C.

42. The remainder of the proceeds of sale of the allegedly surrendered lands was held by the Government in trust for the Beaver Indians but was never paid out or accounted for until the settlement of a specific claim in November, 2000, which settlement was paid to persons who were not descendants of the signatories to the 1928 surrender, nor were they entitled to the proceeds of the settlement.

43. The surrender in 1928 has since been acknowledged by all parties to be deficient and void ab initio in a specific claim settlement agreement dated for reference November 23, 2000 (hereinafter the "2000 settlement") as a result of violations of s. 51 of The Indian Act, R.S. 1927.

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44. In 1929, the Government purported to begin selling title to the lands in Beaver Reserves 152 and 152A, notwithstanding that they had no formal title since they had not perfected their title to the land.

45. Prior to the 1928 surrender, only Beaver Indians had resided on Beaver Reserves 152, 152A, and 152B. They vigorously resisted the incursion of white settlers and any other Indian or Melis intruders. There was particular hostility between the Beaver Indians and the Cree who were their traditional enemies.

46. On June 14, 1932, a Cree Indian by the name of Narcisse Horseman, also known as Narcisse Noskie, and his family were illegally transferred from the Fort Vermilion Tall Cree Band to the Beaver Band and took up residence on Beaver Reserve 152B.

47. Thereafter, more Indians of the Horseman clan were allowed by the Indian Agent to transfer, without the consent of the Beaver Indians, to Reserve 152B to the point where they were able to form the majority and take control of the Band Council.

48. These transfers of Horseman Cree to the Beaver Reserve were carried out without the consent of the Beaver people and were against their wishes. They were carried out by the Indian Agent to suit his purposes to make his job easier and were done without consideration of the interests of the Beaver people. The transfers were detrimental to the Beaver people in that they eventually lost control of their Reserve to the more aggressive Horseman Cree. These actions were intentional on the part of the Indian Agent to suit his

purposes and they were reckless in that they were very detrimental to the interests of the Beaver people. The recklessness was so severe that it amounted to bad faith on the part of the Indian Agent.

49. The descendants of Neepee continued to be the sole residents of Beaver Reserve 152C at Clear Hills.

50. Clear Hills was inhabited until approximately 1955 by Francis Napisis, his three sons and one daughter, and their families, who were direct descendants of Neepee. No Horseman ever lived at Clear Hills. Clear Hills was considered by the Beaver Indians to be part of the deal for the 1928 surrender of Beaver Reserves 152 and 152A. They were told it was being "given" to them. Twenty-seven years later, the Government took the position that there was a price per acre which, due to its carelessness in handling the Beaver funds, had not been paid until 1955.

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51. In 1948, the Government negotiated the surrender of the fractional section in Beaver Reserve 152 leaving only Beaver Reserves 152B and 152C in the hands of the Beaver Indians. Reserve 152B was near the Horse Lakes. Reserve 152C was in the Clear Hills district. The land collectively became known as lands allocated to the Horse Lake and Clear Hills Band, which had originally been called the Beaver Indians of Dunvegan Band. Edward Stoney, the son of Thomas Stoney, was one of the signatories to the 1948 surrender.

52. In the 1980's, the Band Council of Indian Reserve 152B, which had become

dominated by the Horseman Cree, applied for and were granted a change of name to the Horse Lake Band. The lakes near Ounvegan had been named the Horse Lakes Jong before any Fort Vermillion Horseman Cree had transferred to the Beaver Band. The similarity between the name of the lakes and the surnames of transferees is coincidence, however, in later years this led to confusion.

53. By a letter dated May 15, 1987, the Minister of Indian Affairs and Northern Development, Bill McKnight, advised Chief James Horseman that effective June 3, 1986, the Horse Lake Band would have control of its membership. He stated:

"Hereafter, all additions to and deletions from the Horse Lake Band list will be made by your Band in accordance with the membership rules that you have established."

54. By this act of the Government, Chief James Horseman and his clan took over sole control of the Band membership list deciding who was a member and who was not.

55. This act by the Minister of Indian Affairs was reckless and wrong in that it failed to take into account the welfare of the Beaver descendants who had become a minority on their own Reserve. The actions of the Minister were reckless to the point of constituting bad faith.

56. In September, 1991, the Horse Lake First Nation, which by then was completely controlled by Horseman Cree and Chief James Horseman, submitted a specific claim to the Government alleging that the 1928 surrenders of most of Beaver Indian Reserve 152 and all of Neepee Chief Reserve #152A were null and void ab initio.

57. On April 27, 1993, Mr. Justice E. S. Lefsrud for the Court of Queen's Bench for Alberta, ordered that "there be a declaration that the Defendant, James Horseman, while holding the office as Chief of the Plaintiff (the Horse Lake Indian Band) is in breach of his

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fiduciary duties to the Plaintiff'. Mr. Justice Letsrud went on to grant Judgment to the Band in the amount of \$200,000.00 plus interest, being an amount converted by Chief Horseman to his use out of Band funds.

58. Notwithstanding that the Defendants knew or ought to have known that Chief James Horseman had breached his fiduciary duty to his Band, the Government entered into land claims discussions with him.

59. By letter dated September 22, 1994, John St. Claire, Assistant Deputy Minister for Claims and Indian Government, stated to Chief Robert Horseman, "For the purpose of negotiations, Canada accepts that the Band sufficiently established that Canada has a lawful obligation within the meaning of the specific claims policy with regard to the claim".

60. On or about November 23, 2000, the Government completed a specific claim settlement agreement with the Horse Lake First Nation agreeing to pay to the First Nation the sum of \$123,672,000.00 as compensation for their claims with respect to the 1928 surrender of Reserves 152 and 152A.

61. Upon receipt of the settlement funds, Chief Robert Horseman and all of his counsel voted themselves salaries approaching \$450,000.00 per year. None of the descendants of the Beaver Indians who were the signatories of the 1928 Surrender Agreement received any benefit from the settlement funds.

62. Negotiating with the wrong party regarding the surrender of Beaver Reserves 152 and 152A was reckless on the part of Mr. John St. Claire, Assistant Deputy Minister of Claims and Indian Government. Mr. St. Claire had access to the Indian Affairs records showing the genealogy of the Horseman Cree and the Beaver Indians. It was only Beaver Indians who had any right, title or interest to Beaver Reserves 152 and 152A. It was only the Beaver Indians who negotiated the alleged surrender of these Reserves. No Horseman Cree had ever resided on those Reserves and as such would not have had any interest in the specific claim negotiations with respect to Beaver Reserves 152 and 152A. By negotiating with the wrong parties, the Assistant Deputy Minister was reckless to the point of acting in bad faith.

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THE PLAINTIFFS

I) Roger Stoney

63. Roger Stoney is the grandson of Edward Stoney, who was a signatory to the 1948 surrender. He is the great grandson of Thomas Stoney (Peyawasis) who was a signatory to the 1928 Surrender Agreement.

64. Roger Stoney's mother, the Plaintiff, Eileen McAllister (nee Stoney), the granddaughter of Thomas Stoney (Peyawasis), married Bill McAllister, a non status Indian in 1949, thereby losing her status by reason of s. 12(1)(b) of The Indian Act, 1951. The Plaintiff, Roger Stoney was born to Eileen and Bill McAllister in 1957. By operation of ss. 11 and 12, The Indian Act, 1951, Roger Stoney was not entitled to be registered as an Indian.

65. Upon ceasing to be a member of the Beaver Indians of Dunvegan Band #152, by reason of marriage, Eileen McAllister became entitled to receive, pursuant to s. 15(1) of The Indian Act, 1951, from His Majesty the King a one per capita share of the capital and revenue monies held by His Majesty in trust for the Band with respect to the sale of the surrendered lands and an amount equal to the amount she would receive in the succeeding 20 years if she were to remain a member of the Band.

66. Section 15(1) of The Indian Act, 1951 states:

15(1) Subject to section two, an Indian who becomes enfranchised or who otherwise ceases to be a member of a band is entitled to receive from His Majesty

(a) one per capita share of the capital and revenue moneys held by His Majesty on behalf of the band, and moneys held by His Majesty on behalf of the band, and

(b) an amount equal to the amount that in the opinion of the Minister he would have received during the next succeeding twenty years under any treaty then in existence between the

band and His Majesty if he had continued to be a member of the band.

67. Eileen McAllister has never been paid the sums due to her pursuant to s. 15(1).

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68. In 1985, Bill C-31 was passed allowing Eileen McAllister to apply to have her Indian status restored and to have status conferred upon her children. Eileen McAllister was a Beaver Indian of the Dunvegan Band, which by 1985 had come to be known as the Horse Lake Band. When she was restored to the Indian Register in 1986, her status card which was received from the Minister of Indian Affairs and Northern Development, indicated that she was affiliated with the Horse Lake Band.

69. Roger Stoney was restored to the Indian Register in or about 1986. According to his status card received from the Minister of Indian Northern Affairs, he too was affiliated with the Horse Lake Band.

70. Upon his mother receiving status, Roger Stoney began to make inquiries as to how to obtain membership in the Horse Lake Band for himself, his siblings, and his mother. His inquiries were either ignored or met with hostility.

71. As pried in paragraph 32 herein, in 1987, the Horse Lake Band was given control of its

membership list. One of the rules of the Horse Lake Membership Code Bylaw No. 100.0 required that any potential new members to Horse Lake Band had to obtain 51 % approval of existing members.

72. . In 1994, Roger Stoney approached approximately 20 Horse Lake member families to request their signatures in support of his mother's application. None of those people he approached would sign. He was advised by several of the Band Members that they had been told not to sign by Council members.

73. In 1997, Roger Stoney went to the Horse Lake Reserve seeking support for his application for membership and inclusion on the Horse Lake Band list. He obtained approximately 42 signatures, which was well short of 51%. The rest of the people that he approached told him that they did not want to get involved politically and some of them advised that they had been told not to sign on his behalf.

7 4. Since gaining Indian status in 1987, Roger Stoney has made several requests of the Minister of Indian Affairs and Northern Development seeking assistance in obtaining membership to the Horse Lake Band. He was consistently advised by the Minister or his agents that since the Band had control of its own membership list the Minister could not get involved. By taking this position, the Minister, one of the Defendants herein, has perpetuated the discrimination that Bill C-31 was intended to prevent by allowing individual Bands to deny membership to persons who by their heritage rightfully ought to be Band members.

75. As a result of the Horse Lake Band's refusal to allow Roger Stoney and his family onto the membership list, they have received no benefit from the settlement of the specific claim, which related to lands over which their direct ancestors had treaty rights and aboriginal title, which right and title have never been extinguished.

76. There are a small number of Beaver descendants who are on the Horselake Band Membership list. These Beaver descendants were discriminated against by the majority Horseman Cree when the proceeds of the 2000 settlement were received. These Beaver descendants claim their proportionate share of the settlement proceeds.

ii) Eileen McAllister Inee Stoney)

77. Eileen McAllister is the granddaughter of Thomas Stoney (Peyawasis). She was born in a teepee in the traditional lands of the Dunne-za. Her family carried on the traditional activities of hunting and trapping throughout the areas designated as Beaver Reserves 152, 152A, 152B, and 152C.

78. Eileen McAllister recalls the stories of her father, Edward Stoney, and other elders about the traditions, culture, and religion of the Beaver people. There were no Horseman Cree among the Beaver people at that time. The Cree were the traditional enemies of the Beaver Nation.

iii) · Melvin McAllister

79. Melvin McAllister is the son of Eileen McAllister. He obtained Treaty Status after his mother, Eileen McAllister, had been reinstated under Bill C31.

80. It was Melvin McAllister who retained class counsel on behalf of his family and all descendants of the Beaver Indians of Dunvegan. Mr. McAllister has been involved in the research for this case for more than 10 years. He provided to class counsel¹ photocopies of many original documents and provided to class counsel the factual basis for this claim.

81. Mr. McAllister resides in Northern Alberta, where he drives a water truck in the oil fields. At the time of the execution of this Statement of Claim, Mr. McAllister had made three trips to Regina, Saskatchewan, to meet with class counsel and provide instructions.

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82. Mr. McAllister has conferred by telephone with class counsel on many occasions to provide additional information and instructions.

83. Mr. McAllister is educated and is a good communicator. He is prepared to stand as Representative Plaintiff and he can state that on the common issues has no interest in conflict with any other class member. Mr. McAllister is willing and able to keep potential class members apprised of the progress of this class action.

CAUSE OF ACTION

I) Breach of Fiduciary Duty

84. The Government owed a fiduciary duty to the Beaver Indians flowing from the special

relationship between Indians and the Queen arising from Treaty 8.

Under Treaty 8 the Beaver Indians turned over to the Crown huge tracks of land in exchange to some small reserves and the other covenants contained in the Treaty. Negotiations were carried on in English. The Beaver ancestors had very little understanding of the English language. The Government negotiators were in a far superior position and negotiated a Treaty that was very beneficial to the Crown. This unequal bargaining position and the vulnerable state of the Beaver people created a fiduciary relationship between the Crown and the Beaver Indians.

The Indian Act was designed to be a code whereby the Federal Government controlled every aspect of life for status Indians. Once adhering to the Treaty, the Beaver Indians came under the total control of the Federal Government. That control gave rise to fiduciary obligations.

85. An 1885 Amendment to The Indian Act required Band members to obtain passes from the local Indian Agent in order to leave their Reserves. This system served to restrict the movement between Reserves and to prevent political and religious gatherings. Indian agents also supervised spending and distributed housing, clothing, and rations. In all of these matters, the Agents were given a good deal of discretion, only loosely supervised by regional inspectors.

86. That Indian Agents and Other Government employees were acting in their own interests and to the detriment of Indian people was known to the Federal Government as early as 1915, when a Royal Commission, known as the Ferguson Commission, determined that several Federal Government employees had placed themselves in a conflict of interest by purchasing surrendered lands. The Government failed to take appropriate steps in order to prevent the continuation of

these conflicts of interest on the part of Indian Agents and other Government employees.

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87. Members of the Government, including high ranking cabinet ministers, such as Frank Oliver, who was appointed Minister of the Interior and Superintendent General of Indian Affairs in April, 1905, publically expressed views that demonstrate a blatant breach of their fiduciary duty. In commenting upon the proposed Crooked Lake (Saskatchewan) surrenders, Oliver stated, "Of course the interests of the people must come first and if it becomes a question between the Indians and the Whites, the interest of the Whites will have to be provided for".

88. Part of the Federal Government's motivation for encouraging surrenders was to use the proceeds of sale from surrendered land to pay for items it would otherwise have to provide under its treaty obligations. The standard Surrender Agreements, including the 1928 Agreement in this case, gave the Department of Indian Affairs the final discretion and a trust obligation to control the spending and investment of land sales revenue.

89. On or about July 21, 1928, the Government, acting through its agents and servants, breached Treaty Eight, its fiduciary duty to the Class, its special duty to these First Nations people, and its statutory duty to the Beaver Indians of Dunvegan Band, by unlawfully taking lands identified as Beaver Indian Reserves 152 and 152A which were reserved for the Plaintiffs pursuant to Treaty Eight and unlawfully displacing the Beaver Indians of Dunvegan Band.

90. The wrongful taking of the lands by way of the purported sale of Beaver Indian Reserves 152 and 152A has been admitted and acknowledged by the Government by entering into the settlement agreement dated November 23, 2000 (the "2000 Settlement Agreement") between the Government and other persons.

91. The Class members are the only true descendants of the Beaver Indians of Dunvegan Band and they have never ceded, surrendered, or relinquished their right, title, or interest in . Beaver Indian Reserves 152 and 152A, which were wrongfully taken from them and sold by the Government and its agents.

92. The Class members are the direct descendants of the Beaver Indians of Dunvegan Band who occupied Beaver Indian Reserves 152, 152A, and 152C, and are a distinct group of people who are historically recognized as distinct and are the true inheritors of any right, title, and interest in Beaver Indian Reserves 152, 152A and 152C and are entitled to ownership of the said lands or alternatively entitled to any settlement funds or replacement funds related to compensation and damages for the wrongful taking of these reserves by the Government and its agents.

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93, The unlawful taking and selling of Beaver Indian Reserves 152 and 152A resulted in the displacement, exclusion, and deprivation of the Beaver Indians of Dunvegan Band and involved negligent or intentional misrepresentation, fraud, and breach of trust, all of which are contrary to

and in breach of Treaty Eight

94, The Government breached its fiduciary duty by putting the interests of others ahead of the interests of Beaver Indians by negotiating and concluding the 1928 Surrender Agreement, which was done in contravention of The Indian Act,

95, The Government further breached its fiduciary duty to the Beaver Indians with the sale of the lands as aforesaid to non Indian people for prices below what should have been negotiated and received,

96, The Government also breached its fiduciary duty to the Beaver descendants by negotiating the 2000 Settlement Agreement with the wrong persons and paying the funds pursuant to the 2000 Settlement Agreement to persons who had no right to the payment

97, Through the bad faith actions of its agents, the Government put its interests and the interests of others ahead of the interests of the Beaver Indians and their true descendants,

98, The Government has breached its fiduciary duty to the Plaintiffs which, without restricting the generality of the foregoing includes the following particulars:

a} the Beaver Indians (or alternatively a majority of eligible voters) did not surrender their interest in Beaver Reserve No, 152 and 152A;

b} documentation supporting the wrongful taking of Beaver Reserves No, 152 and 152A was fraudulently prepared, or subsequently altered;

c} there was a failure to properly and responsibly administrate, steward, and manage trust monies collected from land sales of Beaver Reserves 152 and 152A; and

d} by negotiating the specific claim agreement with the Horseman Cree instead of the descendants of the Beaver Indians,

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99. The Government is currently continuing in the ongoing breach of its Treaty, fiduciary, trust, statutory, contractual and its special duty to these First Nations people, and the Plaintiffs' particulars of which include:

a) failing to consult with the Plaintiffs about the 2000 settlement and disregarding their status and existence;

b) knowingly, negligently, carelessly, or recklessly, negotiating agreements for compensation and damages with other non-related entities;

c) disregarding and wrongfully excluding the Plaintiffs from their lawful claim to right, title, and interest in any claim for loss, compensation,

and damages for the wrongful taking of Beaver Reserves No. 152 and 152A;

d) negotiating and settling compensation, damages, and debts with persons who had no interest in and no connection to the Beaver Indians or Beaver Reserves No. 152 and 152A;

e) entering into a settlement agreement with other persons which purports to relinquish the rights of the Plaintiffs to a claim for unlawful taking of Beaver Reserves 152 and 152A and by which Plaintiffs have been deprived of the settlement monies due to them which was wrongfully paid to other persons;

without consulting the Plaintiffs knowingly, negligently, carelessly, and recklessly agreeing to pay other persons while excluding and disregarding the Plaintiffs' lawful claim to right, title, interest, and involvement

g) depriving the Plaintiffs of their lawful entitlement to land, compensation, and damages for the illegal taking of the Beaver Reserves No. 152 and 152A which the Beaver Indians of Dunvegan Band and the Plaintiffs have never lawfully surrendered;

h) knowingly, negligently, carelessly, recklessly or intentionally and wrongfully depriving the Plaintiffs of any per capita and/or other

individual distribution of any settlement monies paid or to be paid as compensation for the surrender of Beaver Reserves No. 152 and 152A;

l) such further particulars as will be proven at trial.

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100. The Plaintiffs rely upon the adhesion to Treaty Eight of July 6, 1899 and the Order in Council of the Privy Council No. 917 of May 3, 1907 laying aside for 120 Beaver Indians the Beaver Indian Reserve 152 located in the Peace River district of northwestern Alberta in Townships 81 and 82, Ranges 3 and 4, West of the 6¹/₂ Meridian, containing some 15,360 acres originally administered under the Lesser Slave Lake Indian Agency of the Defendant Government. The Plaintiffs assert un-extinguished Treaty rights and Aboriginal title to the said Beaver Indian Reserves 152 and 152A and the natural resources therein as the Plaintiffs and their ancestors have never ceded or surrendered or relinquished their right, title, or interest in Beaver Reserves 152 and 152A.

101. The assurances expressly given by the agents of the Government at the negotiation of the adhesion to Treaty Eight at Fort Dunvegan on July 6, 1899 and in particular that the Treaty was to last forever, that lands would be reserved in the amount of one (1) square mile for each family of five (5) or 1.28 acres per person which may be taken in severalty and that there would be no confinement to such Reserves which were to secure to the Plaintiffs in perpetuity a fair portion of the land.

102. The Government, its agents and employees exercised discretion over Beaver Indians and their lands pursuant to authority vested in them by The Indian Acts in place at various times.

103. The Government, its agents and employees, abused their discretion by:

i) Manipulating the surrender meeting and fraudulently preparing the surrender documents;

ii) Not paying the proceeds of sale of Beaver River Reserve 152 and 152A to the Beaver Indians as it came in.

iii) Allowing the transfer of Narcisse Horseman and his clan to Beaver Reserve 152 in 1933 against the wishes of the Beaver Indians;

iv) Using the proceeds of sale of Beaver Land to "purchase" Indian Reserve 152C when it was supposed to be given to the Beaver Indians as part of the 1928 surrender;

v) Negotiating with the Horseman Cree and concluding a settlement of the specific claim without carefully ascertaining who was rightfully entitled to the proceeds of the settlement.

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104. The above described breeches of fiduciary duty were perpetrated to the benefit of the

Government and its agents and were done in bad faith.

ii) Breach of Trust

105. Both surrender documents state that His Majesty the King was, "holding the land in trust to sell by public auction the same to such person or persons and upon such terms as the Government of the Dominion of Canada may deem most conducive to our welfare and that of our people". By these terms, a trust relationship was created whereby the Government assumed the obligations of a trustee and the Beaver people were the beneficiaries of that trust.

106. The proceeds of the sale of the land were not distributed to the beneficiaries in accordance with the terms of the trust.

107. The Government did not use the proceeds of sale for the benefit of the Beaver people. This was admitted when it completed the 2000 Settlement Agreement, whereby it paid to the Horse Lake Band the sum of \$123,672,000.00.

108. Part of the motivation for the Beaver people to sign the 1928 Surrender Agreement was that they understood that they would be receiving a Reserve at Clear Hills as part of the agreement. It was never made clear to them that they were being charged \$6.50 per acre for the Clear Hills Reserve. It was not until 27 years later, in 1955, that the Government wrongfully appropriated to itself trust funds for the purchase of Beaver Reserve 152C at Clear Hills.

109. The Government violated the trust created by section 15(1) of The Indian Act by failing

to hold the Plaintiffs' one per capita share of the Band monies in trust for the Plaintiff, Eileen McAllister upon her ceasing to be a Band member and failing to pay to Mrs. McAllister that one per capita share together with the monies that she would have received in the succeeding 20 years after ceasing to be a Band member. Mrs. McAllister seeks to represent other similarly situated Beaver descendants.

11 O. The above actions of the Government constitute a breach of trust for which the Plaintiffs are entitled to damages.

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iii) Negligence

111. The Government had a duty of care to ascertain the proper parties with whom to negotiate the specific claim. Due diligence would have disclosed that the rightful inheritors of Beaver Reserves 152 and 152A are the Class members herein.

112. It was reasonably foreseeable that if the Government negotiated with the wrong persons then harm would ensue to the rightful inheritors.

113. The Government breached its duty of care by negotiating and settling with the wrong parties. The Government has historical records of all of the Dunne-za (Beaver) and the Tall Cree of Fort Vermillion. The Government had a duty to search these records and determine the rightful inheritors of the lands which were purported to have been surrendered in 1928. The Government failed to do this and thereby breached its duty of care.

114. The failure to ascertain the correct successors in title to Beaver Reserves 152 and 152A was recklessness on the part of Government officials amounting to bad faith.

115. · As a result of the negligent actions of the Government, the Plaintiff Class has suffered damages which include being deprived of the benefits of the 2000 Settlement Agreement.

iv) Breach of Statutory Duty

116. The Class members herein are the true descendants of the Beaver Indians who had unextinguished treaty rights and aboriginal title to Beaver Reserves 152 and 152A.

117. Pursuant to ss. 25 and 35 of The Constitution Act, 1982, the Defendants had an obligation to protect the Plaintiffs' treaty rights and aboriginal title. This they failed to do and are in breach of ss. 25 and 35 of The Constitution Act.

118. The specifics of the Government's breach of sections 25 and 35 of The Constitution Act include:

· i) Pressuring Beaver Indians to surrender their lands in 1928 when they had steadfastly refused to do so prior to that time.

ii) Violating section 51 of The Indian Act R.S. 1927 by failing to properly convene a meeting pursuant to that section and by purporting to tack

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onto the 1928 Surrender Agreement additional signatories by way of statutory declarations from Beaver Indians not present at the signing of the Surrender Agreement;

iii) Further violations of s.51 include purporting to count the vote of a person who had been dead for many years prior to the vote and counting the votes of ineligible voters brought in from Beaver Reserve 152B;

iv) The surrender documents do not reflect the Beaver Indians' understanding of the deal they were entering into;

v) All Beaver Indians who put their mark on the 1928 Surrender Agreement were illiterate, therefore the Government had a higher duty to make certain that they understood the terms of the agreement;

vi) The Government failed to obtain the best price for the Beaver lands having regard to the expansion of the oil and gas industry in that area at that time;

vii) Negotiating a specific claim agreement with Horseman Cree who

were not the heirs or descendants of the signatories to the 1928
Surrender Agreement.

COMMON ISSUES

119. The Plaintiffs propose that the following issues be certified as common issues to be heard at the trial of common issues:

- i) Was the 1928 surrender null and void ab initio?
- ii) Are the class members the true descendants of the Beaver Indians who had treaty rights and aboriginal title to Beaver Reserves 152 and 152A prior to purported surrender in 1928?
- iii) Did the Government breach its fiduciary and statutory duties to the descendants of the Beaver Indians by negotiating a specific claim agreement with persons who had no claim or title to the lands in question?
- iv) Was the Government negligent in negotiating and settling the specific claim with the Wrong persons?

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v) If yes to iii) or iv), what is the proper measure of compensation to which class members are entitled?

vi) Are the class members entitled to possession of Beaver Reserve 152C or in the alternative, compensation for Beaver Reserve 152C?

vi) Are punitive damages appropriate in a situation where the Government knew or ought to have known it was treating with persons who had no claim, right, or title to the lands in question?

CLASS ACTION IS THE APPROPRIATE PROCEDURE

120. The class is so numerous that joinder of all members is impractical. The exact numbers of class members is currently unknown but can be accurately estimated after discovery. The Plaintiffs believe that the class numbers in excess of 250 persons.

121. The Plaintiffs are committed to prosecuting this class action claim and have retained competent counsel experienced in class action litigation. The Plaintiffs' claims are typical of other members of the Class. Accordingly, the Plaintiffs are adequate representatives of the class and will fairly and adequately protect the interests of the Class.

122. The class action is an appropriate method for the fair and efficient adjudication of the issues and achieving fairness and justice.

123. The prosecution of separate actions would create the risk of inconsistent or varying adjudications which would establish incompatible standards for conduct for the Government.

124. Members of the Class are so numerous that joinder of individual claims in a single action is not practical, however, proceeding with the claim on behalf of all members of the Class by way of a class action is both practical and feasible. Each Class member can be readily identified from information and records available from the Government.

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125. Accordingly, a class action is superior to other available methods for the fair and efficient adjudication of these issues.

126. The Plaintiffs propose that the trial of this action be held at the Calgary Court Centre in the City of Calgary. In the opinion of the Plaintiff, this action will likely take more than 25 days to try.

WHEREFORE THE PLAINTIFFS CLAIM AGAINST THE DEFENDANTS, JOINTLY AND SEVERALLY, THE FOLLOWING RELIEF:

a) a declaration that the Treaty and Aboriginal rights, title, and interest of the Plaintiffs, and members of their clans and families to the Beaver Reserves 152 and 152A lands and resources have not been lawfully surrendered or extinguished;

b) a declaration that the Plaintiffs are entitled to have lands reserved for their exclusive benefit pursuant to the terms of Treaty Eight, namely one (1) square mile for each family of five (5) or that proportion for larger or smaller families of the members of the Beaver Indians of Dunvegan Band.

c) a declaration that any settlement agreement, including the 1928 Surrender Agreement and the 2000 Settlement Agreement signed by the Defendant Government or its agents or representatives are invalid in relation to the Plaintiffs and their families all being members and descendants of the Beaver Indians of Dunvegan Band, in so far as any settlement agreement purports to preclude any individuals and the Plaintiffs, who did not give their consent to any such settlement agreement;

d) a declaration that any settlement agreement signed by the Defendant Government or its Agents or representatives is invalid and of no force and effect in relation to the Plaintiffs and their families, being contrary to the Canadian Charter of Rights and Freedoms, including section 15, 25, and section 35 of the Constitution Act of 1982;

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e) a declaration in the form of a Writ of Mandamus or such other order as the Court may direct that the Defendant Government pay to the Plaintiffs the sum of all paid and unpaid per capita payments and distributions made to any other persons which relate to the wrongful taking and selling of Beaver Indian Reserves 152 and 152A;

damages for breach of trust, fiduciary duty, statutory duty, and contractual duty in the amount of at least \$123,672,000.00, plus interest from 2000 to the date of payment;

g) punitive or exemplary damages from 2000 to the date of payment in the amount of at least \$123,672,000.00 in circumstances where a large award is necessary to have the needed exemplary effect upon the Government;

h) damages for the wrongful conversion of funds for the alleged purchase of Reserve 152C;

l) interest on the said judgment (if the lands are not returned} pursuant to the Judgment Interest Act from the date of wrongful surrender on September 21, 1928 to the date of judgment;

j) costs of this action on a solicitor and client basis or in the alternative on a party and party basis; and

k) such further and other relief as may be requested and this Honourable Court may allow.

DATED at the City of Calgary, Alberta, this 05 day of May, 2010 AND DELIVERED
BY Merchant Law Group LLP, 2401 Saskatchewan Drive, Regina, Saskatchewan, S4P 4H8,
Phone: (306) 359-7777, Fax: (306) 522-3299; and 400, 2710-17 1 h Avenue SE Calgary, Alberta
T2A 0P6, Phone: (403) 225-7777, Fax: (403) 273-9411, E.F. Anthony Merchant, Q.C.

Page 27 of 28

ISSUED out of the office of the Clerk of the Court of Queen's Bench of Alberta, Judicial
District of Calgary, this
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day of May, 2010.
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K. MCAUSLAND COURT

SEAL

CLERK OF THE COURT

This Statement of Claim is filed by the solicitor for the Plaintiff, whose name and address for service is:

MERCHANT LAW GROUP LLP

Barristers and Solicitors

2401 Saskatchewan Drive

Regina, Saskatchewan

S4P 4H8,

Phone: (306) 359-7777

Fax: (306) 522-3299

E.F. Anthony Merchant, Q.C.

And:

400, 2710- 17'h Avenue SE

Calgary, Alberta

T2A OP6

Phooe: (403) 225-7777

Fax: (403) 273-9411

Z:\Stiaun\MEMOS FOR MR.E.F.A MERCHANT Q.C\BeaverBandClaim.wpd

NOTICE TO:

HER MAJESTY THE QUEEN IN RIGHT OF

CANADA (as represented by the

ATTORNEY GENERAL OF CANADA and

THE MINISTER OF INDIAN AFFAIRS AND

NORTHERN DEVELOPMENT CANADA)

You have been sued. You are the Defendant. You have only 15 days to file and serve a Statement of Defence or Demand of Notice. You or your lawyer must file your Statement of Defence or Demand of Notice in the office of the Clerk of the Court of Queen's Bench in Calgary, Alberta. You or your lawyer must also leave a copy of your Statement of Defence or Demand of Notice at the address for service for the Plaintiffs named in this Statement of Claim.

WARNING: If you do not do both things within 15 days, you may automatically lose the law suit. The Plaintiffs may get a Court judgment against you if you do not file, or do not give a copy to the Plaintiff, or do either late.

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IN THE COURT OF QUEEN'S
BENCH OF ALBERTA
JUDICIAL DISTRICT OF
CALGARY

BETWEEN:

ROGER STONEY, EILEEN
. McALLISTER (nee STONEY) and
MELVIN McALLISTER
Plaintiffs

-and-

HER MAJESTY THE QUEEN IN RIGHT
OF CANADA (as represented by the
ATTORNEY GENERAL OF CANADA and
the MINISTER OF INDIAN AFFAIRS AND
NORTHERN DEVELOPMENT CANADA)

Defendant

STATEMENT OF CLAIM

Merchant Law Group LLP

Barristers and Solicitors

400, 2710 - 17 1 h Avenue SE

Calgary, Alberta

T2A OP6

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E.F. Anthony Merchant, QC

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